

EXHIBIT A



Birdstep Agreement No: 04-SLA-PURP-9319-00

SOFTWARE LICENSE AGREEMENT (DATABASE PRODUCTS)

General Terms and Conditions

PARTIES:

Licensee:

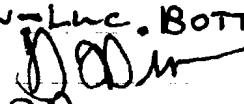
Purple Labs SA, a French corporation

11 Avenue du Lac de Constance

BP 350 Savoie Technolac, Le Bourget du Lac 73375, France

Phone: (+33 (0) 4 79 26 48 60 Fax: (+33 (0) 4 79 26 48 61

Email: JEAN-LUC.BOTTO@PURPLELABS.COM

Signature: 

Name and Title: DODONOVAN CEO

Date: 22/12/04

Birdstep:

Birdstep Technology Incorporated, a Delaware corporation


2101 Fourth Avenue, Suite 2000

Seattle, WA 98121

Phone: 206-748-5353

Fax: 206-748-5200

Email: STEINAR.SANDE@BIRDSTEP.COM

Signature: 

Date: 12/22-04

Name and Title:

Steinar Sande, Vice-President, Sales and Marketing

EFFECTIVE DATE: December 31, 2004

This Agreement includes the General Terms and Conditions set forth below and one or more Product and Pricing Addenda under which Licensee may license Products from Birdstep. The Agreement may also include one or more Maintenance and Support Addenda or Services Addenda. Each Addendum will contain additional terms and conditions that apply to the particular Product or Maintenance and Support or Services specified on the Addenda. Each Addendum will have its own effective date, which may differ from the Effective Date of this Agreement.

1. **Definitions.** The following capitalized terms used in this Agreement have the following meanings:

- 1.1. **"Addenda"** or **"Addendum"** means addenda, exhibits, schedules, amendments and other modifications to this Agreement as Licensee and Birdstep may execute from time to time. Each Addendum will have the same agreement number as this Agreement and an addendum number.
- 1.2. **"Additional Reseller"** means a reseller of an Application that contains the Product as an embedded or bundled component.
- 1.3. **"Affiliate"** means an entity that owns, is owned by or is under common ownership with

a party to this Agreement. Ownership means more than a 50% ownership interest.

- 1.4. **"Agreement"** means these General Terms and Conditions and any Addenda.
- 1.5. **"Application"** means Licensee's software application(s) listed in a Product and Pricing Addenda. If authorized in an Addendum, Licensee can sell an Application that contains the Product as an embedded or bundled component.
- 1.6. **"Confidential Information"** means information disclosed by one party to the other party, including, but not limited to, information about a party's technology, software, tools, business, or plans for the future in connection with any of the foregoing, suppliers, personnel and other business relationships, sales and marketing plans, and financial information. The

Products, the intellectual property and other proprietary rights associated with the Products, and the terms of this Agreement are Confidential Information of Birdstep.

- 1.7. **"Confidential Materials"** means any and all documents, copies, notes, or other physical embodiments of or reflecting the Confidential Information.
- 1.8. **"End-User"** means an entity which purchases a Product for its own use from a Licensee or its Additional Reseller after the direct Licensee has embedded the Product within its own Application.
- 1.9. **"License Fees"** means those license fees that Licensee is required to pay under a Product and Pricing Addendum.
- 1.10. **"Maintenance and Support"** means the maintenance and support services for the Products to be provided by Birdstep under a Maintenance and Support Addendum.
- 1.11. **"Marks"** means Birdstep's trademarks, trade names, service marks or logos identified on Birdstep's website at www.birdstep.com.
- 1.12. **"Product"** or **"Products"** means the Birdstep software product(s) licensed to Licensee under this Agreement, as set forth in a Product and Pricing Addendum, including all bug fixes, upgrades, updates and releases.
- 1.13. **"Fixed Purchase"** means acquisition by Licensee of licenses to the Products, the fees for which are due within 30 days of execution of the applicable Product and Pricing Addendum.
- 1.14. **"Rolling Purchase"** means acquisition by Licensee of licenses to the Products in the increments and at the prices set forth in a Product and Pricing Addendum.
- 1.15. **"Royalty Purchases"** means Products with License Fees listed in an Addendum as "Royalty Purchases".
- 1.16. **"Seat"** means a copy of the Product, or any of its components, installed on a single machine.
- 1.17. **"Server"** means a Seat that resides on a single Server machine and is capable of accepting connections from one or more Seats residing on client machines.
- 1.18. **"Session"** means a concurrent connection from a client-side machine to a Server machine; provided that multiple instances of connections from the same client-side machine to a Server machine constitute multiple Sessions.
- 1.19. **"Territory"** means the geographic region in which Licensee is licensed for a Product, as set forth in a Product and Pricing Addendum.
- 1.20. **"Use"** means storing, loading, installing and/or running the Products, or displaying screens generated by the Products.

2. Grant of Limited License.

- 2.1. **Product License.** Subject to the terms and conditions of this Agreement, Birdstep grants to Licensee a non-exclusive, non-transferable, revocable license to Use, license, offer for license and distribute the Product(s) identified in a Product and Pricing Addendum under this Agreement. Birdstep will provide Licensee with a single master copy of the Product from which Licensee may reproduce copies, subject to the limitations indicated in Section 3 of this Agreement and in any Addenda. Licensee may use, license, offer for license, reproduce and

otherwise distribute the Products in object code form only. Although a source code license may be granted in the Addendum, Licensee may not distribute, sublicense, or display source code to third parties. Birdstep retains sole and exclusive ownership of all right, title and interest in and to the Products, all copies and all modifications and enhancements, and all documentation, including all intellectual property rights.

- 2.2. **Marks License.** Birdstep grants to Licensee a non-exclusive right and license to use the Marks solely for purposes of marketing or distributing the Product(s) as an embedded or bundled component of an Application listed on the Product and Pricing Addendum, if any. The use of any of the Marks in connection with this Agreement will not create any right, title or interest in or to the Marks, and all use and goodwill associated with the Marks will benefit Birdstep. Licensee does not have the right or license to copy Birdstep's trade dress.
- 2.3. **Copyright Notice.** If a Product and Pricing Addendum indicates that a "VAR" or "VAR + Additional Resellers License" is granted for a Product, Licensee will affix the Birdstep copyright notice on such Product in the same location in which Licensee affixes its own copyright notice.
3. **License Types, Terms and Limitations.**
 - 3.1. **Software License Type and Terms.** A Product and Pricing Addendum will specify the Product licensed and type of license granted under this Agreement, and will set forth additional terms and conditions of the license.
 - 3.2. **License Limitations.** The following terms apply to all licenses granted under this Agreement:
 - 3.2.1. Licensee's rights in the Products are limited to those specifically granted in this Agreement.
 - 3.2.2. All license rights may be exercised only in the Territory.
 - 3.2.3. Licensee may not sublicense the license rights, except as expressly permitted in a Product and Pricing Addendum.
 - 3.2.4. Licensee may not (and will ensure, to the best of its ability, that its End-Users and any Additional Resellers do not) reverse engineer, disassemble, or decompile the Products, or otherwise attempt to discover the source code of the Products or disable any embedded link(s) that are provided with the Products or a Product update, except to the extent required to obtain interoperability with other independently created software programs, and then only to the extent expressly permitted by applicable law and only after Licensee has notified Birdstep in advance in writing of its intended activities.
 - 3.2.5. Licensee may not remove any copyright, trademark, or other proprietary notices from the Products or the media.
 - 3.2.6. Licensee may not modify the Products or create derivative works of the Products, other than those created by embedding or bundling the Products in an Application, if permitted under a Product and Pricing Addendum.
 - 3.2.7. Licensee may not use the Products for commercial time-sharing or service bureau use, or otherwise rent or lease the Products.

3.2.8. Licensee's right to reproduce, distribute, and/or use the Products is limited to the number of copies set forth in the Product and Pricing Addendum. The number of copies licensed under a Product and Pricing Addendum will be expressed in the Addendum in terms of number of Seats, Sessions and/or Servers, unless otherwise specified in the Addendum.

3.3. License Fees. License Fees for a Product are set forth in a Product and Pricing Addendum.

4. Maintenance and Support. A Maintenance and Support Addendum will set forth any Maintenance and Support services to be provided by Birdstep for a Product.

5. Payment Terms. All payments under this Agreement will be due and payable by Licensee to Birdstep no later than 30 days from Birdstep's invoice date, unless alternate payment arrangements are specified in the Product and Pricing Addendum. All payments are irrevocable, non-contingent, and nonrefundable. Within 5 calendar days following the Effective Date, Licensee agrees to provide a valid purchase order covering all pre-payable License Fees, Maintenance and Support fees and any other fees set forth in any Addenda. Failure to provide the purchase order will constitute a material breach of this Agreement, and Birdstep may elect to terminate this Agreement under the terms of Section 12.

6. Books and Records/Verification. Licensee will at all times keep accurate books and records showing all financial transactions associated with this Agreement, the identity and number of Servers, Seats and/or Sessions where the Products are installed and/or accessed, records relating to Licensee's sales and distribution activities, and records relating to distribution by Additional Resellers, if any. Birdstep will have the right, at reasonable times and upon advance reasonable written notice, to inspect and make copies of Licensee's books and records for the purpose of verifying compliance with this Agreement. If any inspection reveals an underpayment of amounts owing to Birdstep, Licensee will promptly pay the difference. If any error is 5% or more of the aggregate amounts payable to Birdstep for the period reviewed, Licensee will pay Birdstep's out-of-pocket costs with respect to that examination and the next subsequent re-examination. Birdstep will not make inspection requests more than 2 times during each Birdstep fiscal year, unless an error was detected in a previous inspection in which case Birdstep may make inspection requests each calendar quarter for the remainder of this Agreement.

7. Limited Warranties.

7.1. Warranty. Birdstep warrants to Licensee that each Product will perform substantially in accordance with the accompanying documentation for a period of 90 days from date of original delivery to Licensee.

7.2. Exclusive Remedies. Birdstep's entire liability and Licensee's exclusive remedy for a Product which does not conform to Birdstep's warranty will be, at Birdstep's sole option, either: (a) repair or replacement of the nonconforming Product; or (b) refund of the License Fee(s) for the Product (but not any Maintenance and Support fees, royalty

payments or Rolling Purchase License Fees (if applicable)). This warranty will only apply if Licensee notifies Birdstep in writing of the nonconforming Product during the warranty period. If Birdstep elects to refund the License Fee(s) for the nonconforming Product, Licensee will be required to cease using, reproducing and/or distributing the Product.

8. Exclusion of Warranties. Other than the warranty set forth in Section 7 above, Birdstep makes no warranties, express or implied, concerning the Products or Maintenance and Support for the Products, including the implied warranties of merchantability, fitness for a particular purpose, title and noninfringement, or that the Products will operate properly in an Application or be uninterrupted or error-free, or that Maintenance and Support will correct problems with the Products. Birdstep will not be liable or in any way responsible for the commercial success or failure of any Application in which a Product is embedded, or of any enhancement of any such Application. Birdstep makes no warranties concerning any third party product.

9. Taxes and Shipping Charges. Licensee will pay all taxes (including, without limitation, sales, use, value added and withholding taxes), duties, import, customs and export fees, and any other charges or assessments established by any governmental agency, except taxes imposed on Birdstep's net income. All prices for any Products will be F.O.B. point of origin and Licensee will reimburse Birdstep for any shipping expenses incurred under this Agreement. Prices shown on the Product and Pricing Addenda do not include taxes.

10. Disputes. This Agreement will be construed in accordance with and governed by the internal laws of the State of Washington, U.S.A. without giving effect to any choice of law rule that would cause the application of the laws of any other jurisdiction to the rights and duties of the parties. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. Any dispute arising out of or related to this Agreement will be subject to the exclusive jurisdiction and venue of the Washington State courts of King County, Washington (or, in case of federal jurisdiction, the United States District Court for the Western District of Washington).

11. Export Restrictions. Licensee will observe and obey all U.S. export regulations relating to the export of the Products. Products licensed under this Agreement for use outside the United States by Licensee, or by any third party that receives the Products directly or indirectly through Licensee, will be in full compliance with all relevant regulations of the United States Department of Commerce and with the United States Export Administration Act to ensure that the Products are not exported in violation of United States law. The Products may not be exported or re-exported: (a) into (or to a national or resident of) Cuba, Iran, Iraq, Libya, North Korea, Sudan, Syria, or any other country to which the U.S. has embargoed goods; (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders; or (c) to certain governmental end-users not explicitly authorized to receive Products by the United States Department of Commerce in the United States Export Administration Act. Other exports or re-exports may require an export license from the U.S. government. In addition, the Products may be subject to local laws in non-U.S. jurisdictions that restrict the right to import, export, or use such Products. Licensee is responsible for ensuring compliance with all relevant legal restrictions on the export, import, and use of the Products.

12. Term and Termination.

12.1. *Term.* The term of Licensee's license to a Product is set forth in the applicable Product and Pricing Addendum.

12.2. *Termination.* Either party may terminate this Agreement or any Addendum: (a) on written notice to the other party in the event of a material default by the other party and a failure to cure such default within 30 days of written notice of such default; (b) immediately in the event of a breach of the other party's confidentiality obligations; or (c) on the liquidation, dissolution, or winding up of either party's business. Licensee may at any time delay, interrupt, or cease use or purchase of the Products or Maintenance and Support, but in such event this Agreement and the Addenda will continue in force and effect.

12.3. *Effects of Expiration or Termination.* Termination of this Agreement will also terminate all Addenda. Licensee agrees that upon expiration or termination of a Product and Pricing Addendum, it will (and will cause its Additional Resellers to) immediately cease all use, reproduction and distribution of the Product identified in the Addendum. Licensee also agrees that upon expiration or termination of a Maintenance and Support Addendum, it will immediately cease all use of Birdstep's Maintenance and Support services. Expiration or termination of this Agreement or of any Addendum will not entitle Licensee to any refund and will not discharge Licensee of payment obligations accrued as of the date of expiration or termination, even if such obligations are payable after the expiration or termination date.

13. Confidentiality.

13.1. *Disclosure of Confidential information.* For a period of 3 years from the date of receipt of any Confidential Information, or in perpetuity with respect to the Products or related documentation, the receiving party agrees to protect the confidentiality of the disclosing party's Confidential Information with at least the same degree of care that it uses to protect its own similar proprietary information, but in no event less than a reasonable standard of care. The receiving party will not: (a) disclose or otherwise permit any third party other than Affiliates or agents access to the Confidential Information; and (b) use the Confidential Information for any purpose other than to carry out the purposes of this Agreement.

13.2. *Exceptions.* Nothing in this section will restrict the receiving party's use or disclosure of information that: (a) was rightfully possessed by the receiving party before it was received from the disclosing party; (b) is independently developed by the receiving party without referring to the disclosing party's information or data; (c) is subsequently furnished to the receiving party by a third party not under any obligation of confidentiality with respect to such

information or data, and without restrictions on use or disclosure; or (d) is or becomes available to the public other than through any act or default of the receiving party. Either party (and any employee, representative or other agent of either party) may disclose to any and all persons the tax treatment and tax structure of the transactions contemplated by this Agreement and all materials of any kind (including opinions or other tax analyses) that are provided to either party relating to the tax treatment and tax structure, except that any such information and materials will be kept confidential to the extent necessary to comply with any applicable securities laws. The tax treatment and tax structure of the transactions contemplated by this Agreement will not be considered to include the intellectual property and other proprietary rights associated with the Products or the amount of any of the fees, expenses or other payments to be made to Birdstep under this Agreement.

13.3. *Return of Confidential Materials.* All materials of any kind furnished to the receiving party under this Agreement and all copies of the materials, will at all times remain the property of the disclosing party. Upon request of the other party, or upon termination or expiration of this Agreement, each party will, at its election, either: (a) promptly deliver to the other party any and all of the other party's Confidential Materials that are in its possession; or (b) destroy the other party's Confidential Materials.

13.4. *Public Disclosures.* Neither party will issue any press release or make any other disclosure about this Agreement, the relationship between the parties as documented in this Agreement, and its terms or its existence without the prior written approval of the other party, except as required by law.

14. *Licensee Indemnity.* Licensee agrees to defend, indemnify and hold harmless Birdstep and its directors, officers, Affiliates, shareholders, employees and agents from and against any and all penalties, damages, costs, judgments and any other expenses (including, but not limited to, reasonable attorneys' fees, in-house counsel costs and appellate fees) incurred in connection with the sale, distribution or Use of the Products or any Application by Licensee, Licensee's Additional Resellers or Licensee's End-Users.

15. *Birdstep Infringement Indemnity.* Birdstep will defend Licensee and pay the amount of any adverse final judgment (or settlement to which Birdstep consents) in any lawsuit or other judicial action that arises out of an infringement by a Product of any currently enforceable patent, copyright or trademark of any third party. This indemnity will only apply if Licensee: (a) promptly tenders the defense of any claim or lawsuit to Birdstep; (b) provides reasonable assistance in the defense of the claim or lawsuit; and (c) gives Birdstep full authority to settle any such claim or lawsuit on Licensee's behalf. If a Product is found to be infringing, Birdstep will, at its option, (x) obtain the right for Licensee to continue using the infringing Product; (y) replace or modify the infringing Product so that it becomes non-infringing; or (z) refund Licensee's License Fees and a prorated portion of any fees pre-paid by Licensee for Maintenance and Support for the infringing Product. If Birdstep refunds Licensee's License Fees for an infringing Product, Licensee will cease using, reproducing and/or distributing the infringing Product. Birdstep has no obligation or liability for any claim or lawsuit based on the use of a Product: (a) with non-Birdstep products; (b) in a manner for which it was not designed; (c) that was modified

by or for Licensee in a manner to become infringing; or (d) to the extent the claim or lawsuit arises from Licensee's distribution or use of a Product after Birdstep's notice to Licensee that it should cease distribution or use of such Product.

16. Indemnification Procedure. The indemnified party (Birdstep under Section 14 or Licensee under Section 15) will: (a) provide the indemnifying party with prompt written notice of any claim for which indemnification is sought, and (b) cooperate fully with the indemnifying party (at the indemnifying party's expense); and (c) allow the indemnifying party to control the defense and settlement of the claim. The indemnifying party agrees to not settle a claim without the indemnified party's written consent unless the settlement releases the indemnified party of all actual and potential obligations under the claim. Nothing in this section will prevent the indemnified party from obtaining separate counsel for its own defense, at its sole expense, and the indemnifying party agrees to cooperate in good faith with any such counsel.

17. Limitation of Liability.

17.1. Birdstep's entire liability and Licensee's sole and exclusive remedy from any causes of action including, without limitation, nonperformance or misrepresentation, and regardless of the form of action, whether in contract, tort or any other legal theory, is limited to, in the aggregate, the amounts paid to Birdstep over the 12 months prior to commencement of the cause of action under the Product and Pricing Addendum that is the subject of the cause of action. Licensee releases Birdstep from all obligations, liability, claims or demands in excess of this limitation.

17.2. Except in connection with a party's indemnification obligations under Sections 14 and 15 of this Agreement, neither party will be liable to the other party for indirect, incidental, consequential, special, punitive or exemplary damages, lost profits, lost use of equipment, loss of stored memory, cost of substitute equipment or other downtime costs, regardless of whether such liability is based on breach of contract, tort, strict liability, breach of warranties, failure of essential purpose or otherwise (even if the other party has been advised of the possibility of such damages and notwithstanding any failure of essential purpose of any limited remedy).

18. Miscellaneous Provisions.

18.1. Severability. If any term of this Agreement is unenforceable or waived, all other terms will remain in effect.

18.2. Assignment. Neither party may assign this Agreement, in whole or in part, without the other party's written consent; however, Birdstep may assign this Agreement without Licensee's consent to a successor in interest or an Affiliate. Any attempt to assign this Agreement other than in compliance with this provision will be null and void.

18.3. Survival. Sections 5 through 18 and any other provision whose continuance is necessary to achieve its essential purpose will survive any termination of this Agreement.

18.4. Counterparts; Facsimile. This Agreement may be executed in any number of counterparts, all of which taken together will constitute a single instrument. This Agreement may be executed and delivered electronically or by facsimile transmission.

18.5. Priority of Terms. If the terms and conditions of this Agreement conflict with those of any click-wrap or shrink-wrap agreement, the terms and conditions of this Agreement will govern. The terms of this Agreement will supersede the terms in any Licensee purchase order or other form of ordering document, and any pre-printed terms and conditions or additional terms and conditions contained on any purchase order or other form of ordering document will be considered deleted.

18.6. Notice in General. All notices, requests and other communications under this Agreement will be in writing and will be delivered in person, or sent by certified mail, return receipt requested, overnight courier service, or by facsimile or by email to the address of the parties set forth on the first page of this Agreement, or to such other addresses as provided in writing by a party. Unless otherwise provided, notice will be effective on the date it is officially recorded as delivered by return receipt or its equivalent.

18.7. Notice Regarding Insolvency or Bankruptcy. In the event that a party becomes insolvent, files a petition in bankruptcy, has such a petition filed against it, determines to file a petition in bankruptcy, or receives notice of a third party's intention to file an involuntary petition in bankruptcy, such party will immediately notify the other party in writing.

18.8. Entire Agreement. This Agreement constitutes the entire agreement between Birdstep and Licensee with respect to this subject matter and supersedes any prior agreements or communications concerning this subject matter. This Agreement may only be changed, or any rights under it waived, by an amendment signed by both parties.

18.9. Reservation of Rights. In addition to any specific right or remedy under this Agreement, Birdstep reserves all other rights and remedies available at law or equity.

Birdstep Agreement No: 04-SLA-PURP-9319-01



PRODUCT AND PRICING ADDENDUM - DATABASE PRODUCTS

ADDENDUM NUMBER ONE

ADDENDUM EFFECTIVE DATE: December 31, 2004

LICENSEE AUTHORIZED SIGNATURE: _____

1. **Term of License:** December 31, 2004-December 30, 2007
2. **Territory:** Worldwide
3. **Application:** 'Purple Labs' line of mobile phone reference platforms
4. **Total Payment Due on Effective Date:** €
5. **Purchase Order Number:** _____ (Due within 5 days of Effective Date)
6. **License.** The following licenses are granted under the General Terms and Conditions and the additional terms and conditions described in this Product and Pricing Addendum:

6.1. **Fixed Purchases.** Licensee agrees to purchase licenses for the following Products at the prices listed below.

Product and Version	License Type*	Platform	By Seat, Server or Session	Total Number of Copies	Total License Fee
RDM Mobile 3.x or 4.x multi- user object code	Internal Development	MontaVista Linux (version to be named later)	Seat	Unlimited	NO CHARGE
RDM Mobile 3.x RDM Mobile 4.x (included when available)	Internal Development	MontaVista Linux Purple Labs OS	Seat	1	€ 9.995 (See Section 7a)
RDM Mobile 3.x RDM Mobile 4.x	VAR + Additional Resellers	MontaVista Linux Purple Labs OS	Seat	Unlimited	€ 18.000 for 1st model (See Section 7b)
RDM Mobile 3.x RDM Mobile 4.x	VAR + Additional Resellers	MontaVista Linux Purple Labs OS	Seat	Unlimited	€ 15.000 for 2 nd model (See Section 7b)
RDM Mobile 3.x RDM Mobile 4.x	VAR + Additional Resellers	MontaVista Linux Purple Labs OS	Seat	Unlimited	€ 15.000 for 3 rd model (See Section 7b)

* License type may be VAR, VAR + Additional Reseller, Internal Production or Internal Development License.

- 6.2. Rolling Purchases. Licensee may purchase licenses for the following Products in the increments and at the prices listed below. For each incremental license purchase, Licensee must submit a purchase order (or an equivalent document acceptable to Birdstep) referencing the Agreement and this Product and Pricing Addendum.

Product and Version	License Type	Platform	By Seat, Server or Session	Number of Runtimes Per Purchase (Increments)	Increments per Licensee Model	License Fee Per Increment
RDM Mobile 3.x RDM Mobile 4.x	VAR + Additional Resellers	MontaVista Linux Purple Labs OS	Seat	Unlimited	1-2 units	€ 15.000 per unit (See Section 7b)
RDM Mobile 3.x RDM Mobile 4.x	VAR + Additional Resellers	MontaVista Linux Purple Labs OS	Seat	Unlimited	3-6 units	€ 12.000 per unit (See Section 7b)
RDM Mobile 3.x RDM Mobile 4.x	VAR + Additional Resellers	MontaVista Linux Purple Labs OS	Seat	Unlimited	7+ units	€ 10.000 per unit (See Section 7b)

7. Other Provisions

- a) **Source Code License:** Licensee agrees to purchase source code for RDM Mobile 3.x for MontaVista Linux for € 9.995 to be used for Internal Development. The Internal Development source code license is perpetual and may be used to develop an unlimited number of applications provided that Licensee has a current deployment contract with Birdstep.

Birdstep agrees to two (2) separate payments for the RDM Mobile source code with the first payment of € 4.998 due 45 days from the execution of this Agreement, the second payment of € 4.997 will be invoiced 30 days from the execution of this Agreement, and will be due 45 days from invoice date, subject to credit approval by Birdstep.

- b) **License Fee:** Licensee agrees to pay € 18.000 for one mobile phone model with an unlimited number of runtime licenses during the term of this Addendum for RDM Mobile versions 3.x or 4.x on the MontaVista Linux or Purple Labs operating systems, for Purple Labs' line of mobile phone reference platforms. At Licensee's request, Birdstep agrees that 40% or € 7.200 will be due on or before February 15, 2004, 40% or € 7.200 due on or before April 15, 2005, and the final 20% or € 3.600 due on or before October 15, 2005 subject to credit approval by Birdstep.

Furthermore, Licensee agrees to purchase for € 15.000 an unlimited number of RDM Mobile 3.x or 4.x for MontaVista Linux or Purple Labs OS runtime licenses for Licensee's second mobile phone model with 40% or € 6.000 due on or before July 15, 2005, 40% or € 6.000 due on or before September 15, 2005, and the final 20% or € 3.000 due on or before March 15, 2006, and to purchase for € 15.000 an unlimited number of RDM Mobile 3.x for MontaVista Linux or Purple Labs OS runtime licenses for Licensee's third mobile phone model with 40% or € 6.000 due on or before January 15, 2005, 40% or € 6.000 due on or before March 15, 2006, and the final 20% or € 3.000 due on or before September 15, 2006. All preceding payments are subject to credit approval by Birdstep.

At any time after the purchase of Licensee's committed first three mobile phone model license purchases, Licensee may purchase an unlimited number of RDM Mobile 3.x or 4.x for MontaVista or Purple Labs OS runtime licenses per the pricing matrix in Section 6.2 for additional mobile phone models with the submission of a purchase order to Birdstep with the first 50% of the runtime license fee due no later than 30 days after the submission of the purchase order and the remaining 50% due 90 days after the submission of the purchase order.

A mobile phone model is defined as one mechanical design and one hardware/software platform designated by a serial or model number.

- c) **Annual Maintenance and Support:** Birdstep agrees to provide the first year of annual maintenance and support only for RDM Mobile 3.x or 4.x for MontaVista as part of Licensee's initial order of € 18,000 for Licensee's first mobile phone model. After the first year of annual maintenance and support, Licensee has the option to purchase additional years of annual maintenance and support at the then standard list price. Birdstep is under no obligation to provide support for customers without a current support contract.
- d) **Rights to Port Product Source Code:** Licensee may port the Product source code, listed in Section 6.1 "Fixed Purchases", to Licensee's "Purple Labs" operating system. Such port will be the Licensee's sole responsibility and Birdstep is not responsible to provide support, bug fixes, updates, upgrades or patches to such Product ports. Should License require support or assistance by Birdstep, such effort would be on a time materials basis.
- e) **RDM Source Code (derivative works):** Where an "RDM Source Code License" is listed above, Licensee is granted a nonexclusive, nontransferable license to reproduce, create derivative works from, and make internal use of the source code for Birdstep's RDM Product ("Source Code"), provided that such internal use will be restricted to support of development of software and that such Source Code will not be used for production. All derivative works of the Source Code will be the sole and exclusive property of Birdstep and Licensee will promptly execute any and all assignment documents Birdstep considers necessary to effect or confirm Birdstep's rights therein. Licensee's license is granted in accordance with the terms and conditions of the Agreement and of this Addendum. Licensee recognizes that the Source Code is confidential and proprietary to and a trade secret owned and/or licensed by Birdstep. Licensee will hold the Source Code in strict confidence and will not disclose it to any third party or to any of its own employees who do not have a need to know in order to effect the purpose of this Agreement as set forth above. Licensee will take the same degree of care that it uses to protect its own source code or other confidential and proprietary information of similar nature and importance, but in any event no less than reasonable care, to protect the confidentiality of and avoid the unauthorized use, disclosure, publication, or dissemination of the Source Code. Licensee agrees that, due to the unique nature of the Source Code, the unauthorized use or disclosure thereof will cause irreparable harm and significant injury to Birdstep, the extent of which will be difficult to ascertain and for which there will be no adequate remedy at law. Accordingly, Licensee agrees that Birdstep, in addition to any other available remedies, will have the right to an immediate injunction and other equitable relief enjoining any breach or threatened breach of this Agreement, without the necessity of proving actual damages or posting any bond or other security. Licensee will notify Birdstep in writing immediately upon becoming aware of any such breach or threatened breach. Licensee's obligations respecting confidentiality of the Source Code will survive termination of this Agreement. Licensee will keep the Source Code in a separate, secured safe, cabinet or other secure area, which will be maintained so as to reasonably preclude unauthorized persons from having access thereto. Notwithstanding any provision to the contrary in this Addendum or in the GTCs, no Phone Support will be provided for such Source Code.
- f) Birdstep agrees to provide front-line maintenance and technical support via Tim Sharp in Europe for a period of 90 days from the time of execution of this Agreement. Second-line and further support after that, shall be direct through Birdstep Technology's technical support department.
- g) **Jump Start Training:** Two days of Jump start training will be given in December 2004, provided that Purple Labs pays for all reasonable travel expenses.
- h) Section 2.3 of the GTCs, Copyright Notice, is deleted and replaced with the following: Licensee is unable to affix Birdstep's copyright notice on Licensee's Product but Licensee agrees to keep Birdstep copyrights within Licensee's source code.
- i) Notwithstanding Section 5, Payment Terms, Birdstep grants Licensee payment terms of 45 days from the date of invoice.
- j) **Press Release:** Licensee agrees to permit Birdstep to quote the Licensee in a Birdstep Press Announcement, the quoted language of which shall be subject to Licensee's approval. However, Birdstep may not release any Press Announcement until the first shipment of Licensee's product which is projected to be in September 2005..
- k) **Case Study:** Licensee agrees to assist Birdstep in writing a Case Study on Licensee's Application, the language of which shall be subject to Licensee's approval.

8. Additional License Terms and Conditions.

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9 Commencement; Termination. Licenses granted under Sections 6.1 and 6.3 will commence upon execution of this Product and Pricing Addendum. Licenses granted under Section 6.2 will commence upon Birdstep's acceptance of Licensee's purchase order, if Licensee is in compliance with the terms and conditions of the Agreement at the time Birdstep accepts the purchase order. All licenses granted under this Product and Pricing Addendum will terminate upon expiration or termination of this Product and Pricing Addendum.



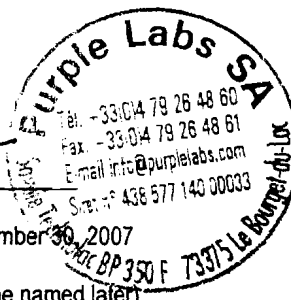
Birdstep Agreement No: 04-SLA-PURP-9319-02

MAINTENANCE AND SUPPORT ADDENDUM - DATABASE PRODUCTS AND END-USERS

ADDENDUM NUMBER TWO

ADDENDUM EFFECTIVE DATE: December 31, 2004

LICENSEE AUTHORIZED SIGNATURE: _____



1. **Term of this Maintenance and Support Addendum:** December 31, 2004-December 31, 2007
2. **Product:** RDM Mobile 3.x and RDM Mobile 4.x for MontaVista Linux (version to be named later)
 - 2.1. **Total Support Fee:** Included for the first year as part of Licensee's initial order of € 18.000 for Licensee's first mobile phone model for the Term stated above
3. **Application:** Purple Labs' line of mobile phone reference platforms
 - 3.1. **Source Code Support:** A port to Licensee's "Purple Labs" operating system will be the Licensee's sole responsibility and Birdstep is not responsible to provide support, bug fixes, updates, upgrades or patches to such Product ports. Should License require support or assistance by Birdstep, such effort would be on a time materials basis. Birdstep will provide support, bug fixes, patches, and updates for Licensee's RDM Mobile 3.x and 4.x for MontaVista Linux source code licenses. Birdstep cannot provide support to RDM Mobile source code modifications.
4. **Package Chosen:** Check the service level selected by Licensee:

€ 4.995* ☒ Standard
 ☐ Enhanced
 ☐ Premium
 ☐ Best Effort
 ☐ Legacy

*Birdstep agrees to provide first year of maintenance and support as part of Licensee's initial order of € 18.000 for Licensee's first mobile phone model.

5. **Maintenance and Support Services Included:**

	Standard	Enhanced	Premium	Best Effort	Legacy
Unlimited communication for a single customer contact	x	x	x	x	x
Unlimited communication for up-to five customer contacts			x		
Access to product specialists through email, web, phone or fax	x	x	x	x	x
Escalation up to VP and COO when needed	x	x	x	x	x
Customer Support available 8am-4pm Mon-Fri Pacific Time (except major US holidays)	x	x	x	x	x
Response (first contact after reporting issue) within 4 hours	x	x	x	x	x
Response (first contact after reporting issue) within 1 hour		x	x		
Response (first contact after reporting issue) within 30 minutes			x		
24x7 emergency support			x		
Named personal support engineer			x		
Problem investigation	x	x	x	x	x
Bug Fixes	x	x	x		x
Product CD replacement	x	x	x		
Premium Debug Instrumentation Package (Win32 only)			x	x	
Performance analysis and optimization recommendations (1 report)			x	x	

5. **Maintenance and Support Services Included:**

	Standard	Enhanced	Premium	Best Effort	Legacy
Developer assist, including schema design (8 hours)		x			
Developer assist, including schema design (16 hours)			x		
On-site product training and design workshop (1 week)			x		
Minor version/feature upgrades as available	x	x	x		
Major version/feature upgrades as available			x		
Major version/feature discount on development licenses	x	x		x	x

6. **Support Not Covered by this Agreement:**

Birdstep has no obligation under this Agreement to support the following:

- a) Altered or modified Products or a combination of Products with software, hardware or other applications not covered by this Agreement;
- b) Errors or problems created by Licensee's, misuse of the Products or problems resulting from hardware malfunction or by a malfunction in other software not provided by Birdstep.
- c) Questions concerning the adaptation or modification of Licensee's Products, questions concerning third party products, and questions concerning development usage.

7. **Licensee's Responsibilities:**

Licensee will designate one or more employees, who will be trained and knowledgeable concerning the Products, to be responsible for contacting Birdstep for telephone support. Licensee agrees to furnish descriptions of malfunctions in the form requested by the Birdstep Customer Support Engineer. Licensee also agrees to assist Birdstep's efforts to duplicate any errors or problems in Licensee's Products.